
(2013) 08 AHC CK 0244

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4378 (SS) of 1993

Mohd. Yaseen Hashmi

APPELLANT

Vs

Secretary, Basic Shiksha Parishad U.P. and Others

RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Citation : (2013) 4 UPLBEC 2973

Hon'ble Judges : Devendra Kumar Upadhyaya, J

Bench : Single Bench

Advocate : M.A. Faridi, Sri Pt. S. Chandra, Sri S.D. Dwivedi and Sri Sushil Kumar Singh, for the Appellant; K.S. Pandey, C.S.C., Sri J.B.S. Rathor, Sri Nalini Jain and Sri S.P. Tiwari, for the Respondent

Final Decision : Allowed

Judgement

Devendra Kumar Upadhyaya, J.—Heard Sri Sushil Kumar Singh, learned Counsel appearing for petitioner, Sri J.B.S. Rathore, learned Counsel appearing for respondent Nos. 1 and 2 and Sri S.P. Tiwari, learned Counsel appearing for respondent No. 3. Under challenge in the instant writ petition is an order dated 30.9.1992, passed by Secretary, Basic Shiksha Parishad, U.P. Allahabad whereby representation dated 23.9.1991 made by the petitioner against his termination/dismissal from service has been rejected. Further prayer has been made to quash the order terminating the services of the petitioner dated 7.6.1986 and the approval accorded thereto by the Basic Shiksha Adhikari, Sultanpur by means of order dated 30.12.1986.

2. Sarvodaya Laghu Madhyamic Vidyalaya, Mahmoodpur (Sarangpur), District Sultanpur is a Junior High School recognized under the relevant provisions of law. Petitioner was appointed as Clerk in the said institution by means of order dated 10.7.1976. The appointment of the petitioner was admittedly approved by the Basic Shiksha Adhikari by means of an order dated 30.9.1983. The said order approving appointment of the petitioner as Clerk in the Institution dated 30.9.1983 is part of the record produced by the learned Counsel appearing for

Basic Shiksha Adhikari, Sultanpur before the Court today. The said order dated 30.9.1983 clearly indicates that appointment of the petitioner on the post of Clerk was approved.

3. While serving the institution, petitioner was placed under suspension by the Committee of Management of the Institution by means of order dated 19.8.1985. The aforesaid order of suspension dated 19.8.1985 states that petitioner was placed under suspension on the charge of his undignified behaviour with the Principal and also on the charge of abusing and misbehaving with the Principal physically. The said order dated 19.8.1985 itself reveals that on one hand petitioner was placed under suspension and on the other hand he was also required to submit his explanation. Merely a month after petitioner was placed under suspension, he was issued a letter dated 19.9.1985 by the Principal of the institution informing him that Manager of the Institution has restrained him from marking his attendance on the attendance register. Petitioner appears to have submitted his reply which was received on 20.10.1985 stating therein that in fact it is the Principal who misbehaved with the petitioner on account of certain arguments which took place between the petitioner and Principal on the issue of preparation of certain records pertaining to the fee register etc.

4. It appears that Manager of the Institution wrote another letter dated 5.11.1985 to the petitioner intimating him that he has been absent from the institution with effect from 20.9.1985 till 5.11.1985 and further that he has taken away a sum of Rs. 3,500/- belonging to the Institution with him. Through the said letter it was directed that petitioner should refund back the money to the Manager of the Institution, failing which it would be deemed that petitioner is not desirous of serving the institution and in that eventuality services of the petitioner would stand terminated automatically. Petitioner appears to have submitted his reply on 19.11.1985 to the Manager of the Institution stating therein that neither has he been absent from the Institution nor has he ever denied to serve the Institution. He also stated in the said letter/reply dated 19.11.1985 that he has not taken away the amount as stated in the letter dated 5.11.1985. Petitioner prayed that he be paid his salary accordingly.

5. After certain correspondence, it appears that through letter dated 7.6.1986 approval of Basic Shiksha Adhikari for terminating the services of the petitioner was sought. The said letter dated 7.6.1986 is available on record produced by the learned Counsel appearing for Basic Shiksha Adhikari. The said letter dated 7.6.1986 is being reproduced herein below:

6. Record produced by Sri J.B.S. Rathore, learned Counsel for Basic Shiksha Adhikari further reveals that it contains order dated 30.12.1986, passed by the Basic Shiksha Adhikari, Sultanpur wherein termination of services of the petitioner has been approved.

7. On the allegation that neither the order dated 7.6.1986 allegedly terminating the services of the petitioner nor approval accorded to the said order by the

Basic Shiksha Adhikari dated 30.12.1986 was ever served to the petitioner, he filed writ petition before this Court which was finally disposed of on 21.7.1992 with the direction that the Secretary, Basic Shiksha Parishad, U.P. Allahabad shall decide the appeal filed by the petitioner against the order of termination of his services within a period of two months. In compliance of the aforesaid order dated 21.7.1992, the order dated 30.9.1992 has been passed by the Secretary, Basic Shiksha Parishad, U.P., Allahabad whereby representation/appeal preferred by the petitioner against the termination of his services was rejected and the order dated 30.12.1986 approving the termination of services of the petitioner was affirmed. It is this order dated 30.9.1992, passed by the Secretary, Basic Shiksha Parishad, U.P. Allahabad which is under challenge in the instant writ petition alongwith the order/letter dated 7.6.1986 and the order dated 30.12.1986.

8. Opposing the very maintainability of the writ petition, learned Counsel appearing for Committee of Management of the Institution Sri S.P. Tewari has submitted that since at the time when the services of the petitioner were terminated, the Institution was not getting any grant-in-aid from the State Government and further that it was being run and managed by a private body, the instant writ petition is not maintainable.

9. Placing reliance on the judgment of this Court in the case of Lalsa Prasad Vs. State of U.P. and Others, , learned Counsel for Committee of Management has vehemently argued that any Institution run by a private body, not getting grant-in-aid and the Government having no control over the said body will not be a "State" within the meaning of Article 12 of Constitution of India and such Institution will not be amenable to writ jurisdiction of this Court.

10. Dealing with the aforesaid argument regarding the maintainability of the writ petition, regard may be had to the latest pronouncement of the Hon''ble Supreme Court in the case of Ramesh Ahluwalia Vs. State of Punjab and Others, , wherein it has been held that a private Institution though run by a purely private body where the State has no control over its internal affairs would still be amenable to writ jurisdiction of this Court under Article 226 of Constitution of India provided such a private body is performing public functions. The aforesaid judgment was rendered by the Hon''ble Apex Court in the matter of DAV Public School, Lawrence Road, Amritsar which admittedly is being run by a purely private body. Subject-matter of aforesaid case was disciplinary action taken against an employee of said school which ultimately resulted in his removal from service of DAV Public School. Admittedly, DAV Public School, Lawrence Road, Amritsar also does not get any grant-in-aid from the Government concerned. However, since the school imparts education which is very important public function as such same was held to be amenable to writ jurisdiction of High Court under Article 226 of Constitution of India.

11. In view of aforesaid latest pronouncement by the Hon''ble Apex Court in the case of Ramesh Ahluwalia (supra), reliance placed by the learned Counsel

appearing for the respondents in the case of Lalsa Prasad (supra) does not hold ground any more. The objection regarding maintainability of writ petition is, thus, not sustainable and is hereby rejected.

12. Coming to the merit of the impugned action on the part of respondents in terminating the services of the petitioner, it may be noticed that petitioner's appointment was made in the year 1976 and his appointment was approved by the Basic Shiksha Adhikari, Sultanpur by means of order dated 30.9.1983 which is available on record produced today by the learned Counsel appearing for the Basic Shiksha Adhikari, Sultanpur. It is further noticeable that service conditions including disciplinary matters of a clerical or ministerial staff of a recognized Junior High School are governed by the statutory Rules framed u/s 19 of the Uttar Pradesh Basic Education Act, 1972, known as Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Ministerial Staff and Group "D" Employees) Rules, 1984". Rule 21 of the aforesaid Rules, 1984 provides that no clerk or Group "D" employee of a recognized junior high school will be discharged or removed or dismissed from service or reduced in rank or subjected to any diminution in emoluments or served with notice of termination of service except with the prior approval in writing of the District Basic Education Officer. Rule 23 provides that so far as disciplinary proceedings and the punishment to be inflicted on a clerk is concerned, the same shall be governed by the rules applicable to an Assistant Teacher of a basic school established or maintained by the Board i.e. Basic Shiksha Parishad.

13. Disciplinary action pertaining to Assistant Teachers working in schools maintained by Basic Shiksha Parishad is governed by U.P. Basic Education Staff Rules, 1973. Rule 5(3) of aforesaid Rules 1973 provides that procedure laid down in Civil Services (Classification, Control and Appeal) Rules as applicable to servants of U.P. Government shall be followed in disciplinary proceedings.

14. Submission of learned Counsel for petitioner is that in the instant case before terminating the services of the petitioner no inquiry of any kind was ever held, neither any charge-sheet was served on the petitioner, hence, termination of his services, which in fact is dismissal from service, cannot be permitted to be legally sustained.

15. On the other hand, learned Counsel appearing for Committee of Management tried to support the action on the part of Committee of Management in terminating the services of petitioner. He states that despite several intimations petitioner did not attend the Institution and as such, Manager was left with no alternative but to terminate his services.

16. I have considered the arguments made by learned Counsel appearing for respective parties.

17. What needs to be determined by this Court is as to whether letter dated 7.6.1986 can be said to be an order of termination of services of the petitioner

and further as to whether in absence of any procedure for departmental proceedings having been adopted by the Management of the Institution, can the relationship of employee and employer between the petitioner and the Principal of the Institution be legally permitted to be severed.

18. In the counter-affidavit filed by the Committee of Management nothing has been indicated which can even suggest that petitioner was ever issued any charge-sheet or any inquiry officer was appointed to conduct any inquiry. The counter-affidavit does not disclose any material to infer even remotely that any inquiry against the petitioner on the charges mentioned in the suspension order dated 19.8.1985 was ever conducted.

19. Admittedly, from the discussion of the legal position above, it is clear that a clerk in a recognized junior high school can be inflicted with any penalty only in accordance with the procedure laid down in civil services (classification, control and appeal) rules as applicable to the employees of the State. There is no dispute between the parties that any disciplinary action against the Government employee of the State of U.P. can be taken only on issuing a charge-sheet, seeking reply to the charges and conducting full fledged departmental proceedings against the delinquent employee/officer. Indisputedly, in the instant case no charge-sheet was ever served on the petitioner, neither any inquiry officer was appointed nor disciplinary proceedings of any kind whatsoever were ever conducted against the petitioner. What is available on record of the writ petition as also on the record produced by the learned Counsel appearing for Basic Shiksha Adhikari, Sultanpur is only the letter dated 7.6.1986 wherein approval of terminating the services of the petitioner was sought. The said letter was written by the Management of the Institution requesting the Basic Shiksha Adhikari to give his approval to termination of services of the petitioner. The entire record does not disclose or contain any document which can even suggest that any inquiry against the petitioner was ever held. The letter dated 7.6.1986 only contains a request by the Manager of the Institution made to the Basic Shiksha Adhikari, Sultanpur to accord his approval to the termination of services of the petitioner. However, after so called approval by the Basic Shiksha Adhikari, Sultanpur by means of order dated 30.12.1986, no order terminating the services of the petitioner or inflicting, any punishment on the petitioner appears to have been passed by the Committee of Management or the Principal. Admittedly as per provisions contained in Rule 21 of 1984 Rules, any of the major penalties of either dismissal or reduction in rank or removal can be inflicted on a clerk only with the prior approval in writing of the Basic Shiksha Adhikari. The said rule further provides that even for serving the clerk working in a recognized junior high school with notice of termination of services can be done only with the prior approval of the Basic Shiksha Adhikari.

20. Coming to the facts of the instant case, the documents available on record of the writ petition as also on the record produced before the Court today do not disclose any order or decision of either removal or dismissal of the petitioner

from service. There is only a letter dated 7.6.1986 wherein only request has been made by the Manager of the Institution to accord approval for terminating the services of the petitioner. The said letter dated 7.6.1986 cannot, on any count or by any stretch of imagination, be said to be either an order terminating the services of the petitioner or even a notice of termination of services of the petitioner. It is also noticeable that letter dated 7.6.1986 further reveals that the same contains certain allegations of absenteeism against the petitioner.

21. As observed above, nothing is borne out from the record that any inquiry of any kind into the allegations as mentioned in the suspension order dated 19.8.1985 was ever conducted. From the record, it is also not borne out that any inquiry was ever conducted into the allegations mentioned in the letter dated 7.6.1986.

22. It need not be emphasized that any relationship between an employer and employee can be severed or terminated only in accordance with the Rules governing the service conditions of the employee concerned. In the instant case, admittedly, the procedure applicable in case of disciplinary-proceedings which, as per 1984 Rules, is statutory in nature, has not been followed. Thus, any order, be it an order terminating the services of the petitioner or an order removing/dismissing the petitioner from service cannot be permitted to be sustained even for a moment.

23. As regards the rejection of the representation/appeal filed by the petitioner, by the Secretary, Basic Shiksha Parishad, U.P. Allahabad by means of the order dated 30.9.1992, suffice it to state that in the representation a specific plea was taken by the petitioner that before taking impugned action against him, neither any inquiry officer was appointed nor was he ever given any opportunity to represent his case in support of charges, however, this assertion made by the petitioner in his representation/appeal though was taken note of but Secretary, Basic Shiksha Parishad, U.P., Allahabad while passing impugned order has not been addressed. As already observed above, even record of the instant case does not reveal that any charge-sheet was ever served or any Inquiry Officer was appointed to enquire the charges. It is, thus, the case of punishment without any inquiry.

24. For the aforesaid reasons, the impugned decision on the part of the respondents of terminating the services of the petitioner is liable to be set aside and the order dated 30.9.1992, passed by the Secretary, Basic Shiksha Parishad, U.P., Allahabad also deserves to be quashed.

25. Accordingly, the writ petition is allowed. The order terminating the services of the petitioner, if any, including the letter/order dated 7.6.1986, passed by the Manager of the Institution is hereby quashed. As a consequence of quashing the order/letter dated 7.6.1986, the order of approval passed by the Basis Shiksha Adhikari dated 30.12.1986 also stands quashed. The impugned order dated 30.9.1992, passed by the Secretary, Basic Shiksha Parishad, U.P., Allahabad

rejecting the representation/appeal of the petitioner is also hereby quashed.

26. As a consequence of quashing of the impugned decision on the part of the respondents in terminating the services of the petitioner, petitioner shall be reinstated on the post of clerk forthwith.

27. It has been brought to the notice of the Court that Institution was brought in grant-in-aid scheme in the year 1998. Had the impugned action on the part of the Manager of the Institution in terminating the service of the petitioner not been taken, in all likelihood, the petitioner would have been entitled to seek his salary to be paid to him from the State Exchequer under the grant-in-aid scheme for the reason that appointment of the petitioner was made with the approval accorded by the Basic Shiksha Adhikari by means of order/letter dated 30.9.1983. Thus, while allowing the writ petition, it is further directed that for all consequential service benefits, petitioner shall be deemed to be in service on the post of clerk in the Institution w.e.f. the date of his suspension i.e. 19.8.1985, However, since he has not performed his duties, neither has he worked on the post, he shall not be entitled to be paid his salary for the intervening period i.e. from the date of suspension till he joins his services as clerk pursuant to the instant judgment. The petitioner shall be allowed his joining in the Institution by the Manager of the Institution as well as by the Basic Shiksha Adhikari, Sultanpur within three weeks from the date of production of a certified copy of this judgment. His case for payment of salary from the State Exchequer shall also be considered and decided within next one month from the date of his joining. However, there will be no order as to costs.